



## UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

December 30, 2021

The Honorable Betty A. Rosa  
Commissioner of Education  
New York State Education Department  
89 Washington Avenue, Room 111  
Albany, New York 12234

Dear Commissioner Rosa:

I am writing in response to the New York State Education Department's (NYSED) request to the U.S. Department of Education (Department) on December 22, 2021, for a waiver of the requirements in section 1111(c)(4)(C) and 1111(d)(2)(C-D) of the Elementary and Secondary Education Act of 1965 (ESEA) that the State annually meaningfully differentiate all public schools and identify schools for comprehensive support and improvement (CSI), targeted support and improvement (TSI) (i.e., schools with one or more consistently underperforming subgroups), and additional targeted support and improvement (ATSI) in fall 2022 based on data from the 2021-2022 school year. NYSED requests the waiver to delay identifying TSI, ATSI, and CSI schools until fall 2023.

The Department believes it is important, especially after students, educators, and families endured so much throughout the COVID-19 pandemic, for States to use data to determine where to target resources and support to help students. As you know, the ESEA requires each State to develop and implement a single, statewide accountability system to support all public elementary school and secondary school students in meeting challenging State academic standards, particularly those schools identified for support and improvement based on the accountability system. Accountability systems are valuable tools in achieving the goal of improving outcomes for students and eliminating opportunity gaps in the State, local educational agencies (LEAs), and schools.

Indeed, that is why the Department required all States to assure upon receiving an accountability waiver for the 2020-2021 school year that they would resume identifying schools using data from the 2021-2022 school year in the fall of 2022 to ensure school identification resumes as quickly as possible.

As a result, and after carefully considering NYSED's request, I am declining to approve the State's request because it does not meet the statutory requirements for a waiver outlined in section 8401(b)(1) of the ESEA. Namely, NYSED does not sufficiently demonstrate how the request will advance student academic achievement (section 8401(b)(1)(C)).

Identifying schools for CSI, TSI, and ATSI is an essential component of an accountability system in the ESEA. Specifically, once identified, schools are required to develop and implement plans, which must include evidence-based interventions, to improve student outcomes for the groups of students that led to the identification. Moreover, identified schools are eligible for additional funding

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opportunities and are required to receive additional supports from districts as they address the needs of their underperforming students. Now more than ever, with the COVID-19 pandemic exacerbating disparities in educational opportunities, this focus on supporting underserved students is essential.

The Department also recognizes the tremendous upheaval that schools and educators have been through over the last two years. That is why it is so important that accountability measures be used to provide support and target resources. Consistent with the Department's message to States in the 2020-2021 school year about use of assessment during the pandemic, the Department encourages States to consider additional steps at the State's discretion to reduce the high stakes of assessments in State decisions such as graduation or promotion requirements or in educator evaluations.

The Department is eager to provide any necessary support to help States as they restart their accountability systems. On December 17, 2021, the Department released a draft of [Frequently Asked Questions: Impact of COVID-19 on 2021-2022 Accountability Systems Required under the ESEA](#), intended to support State educational agencies (SEAs), LEAs, and schools as they implement accountability and school improvement requirements under section 1111 of the ESEA using data from the 2021-2022 school year. We believe this document can help address some of the challenges that led NYSED to seek an accountability waiver by pointing to existing options available to States under the law.

NYSED may revise its waiver request, consistent with section 8401(b)(4)(B)(ii) of the ESEA, to meet the requirements of section 8401(b)(1) and resubmit the revised waiver request. If NYSED decides to resubmit, it must do so no later than 60 days from the date of this letter.

In its letter, NYSED also requests to waive the requirements in ESEA section 1003(b)(1) regarding eligibility to receive school improvement funds under ESEA section 1003. The Department will respond separately to the request to waive the eligibility requirements in section 1003(b)(1).

If you have any questions, or if we can provide any technical assistance as you consider changes to your accountability system consistent with the requirements of the ESEA, please contact my staff at [OESE.titlei-a@ed.gov](mailto:OESE.titlei-a@ed.gov).

Sincerely,



Ian Rosenblum  
Deputy Assistant Secretary for Policy and Programs  
Delegated the Authority to Perform the  
Functions and Duties of the Assistant Secretary

cc: Jason Harmon, NYSED